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AMENDED IN ASSEMBLY MAY 23, 1997

AMENDED IN ASSEMBLY MAY 5, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 530**

**Introduced by Committee on Higher Education (Lempert (Chair), Firestone (Vice Chair), Ackerman, Ashburn, Baldwin, Caldera, Cardoza, Cunneen, Havice, Keeley, Knox, Kuehl, Kuykendall, and Scott)**

**(Coauthors: Assembly Members Aguiar, Alquist, Bordonaro, Ducheny, Frusetta, Gallegos, Goldsmith, Granlund, Hertzberg, House, Leach, Leonard, Machado, Margett, Mazzoni, Morrissey, Napolitano, Pacheco, Papan, Perata, Runner, Sweeney, Villaraigosa, Vincent, Washington, Wayne, Wildman, and Woods)**

**(Coauthors: Senators Alpert, Haynes, Karnette, Lee, Leslie, McPherson, O'Connell, Peace, Polanco, Rainey, Schiff, Solis, and Watson)**

February 24, 1997

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An act to add Article 19 (commencing with Section 69980) to Chapter 2 of Part 42 of the Education Code, and to amend Section 23735 of, and to add Sections 17134, 24306, and 24328 to, the Revenue and Taxation Code, relating to postsecondary education.

## LEGISLATIVE COUNSEL'S DIGEST

AB 530, as amended, Committee on Higher Education. Golden State Scholarshare Trust Act.

Existing law provides various programs of student financial assistance in the form of grant and loan programs.

This bill would establish the Golden State Scholarshare Trust Act, pursuant to which, under regulations adopted by the Student Aid Commission, participants would invest money in the Golden State Scholarshare Trust for the benefit of a specific beneficiary for the advance savings for the beneficiary's higher education expenses, as defined, at certain postsecondary educational institutions.

The bill would prescribe the powers and duties of the commission to implement these provisions. The bill would specify the circumstances under which a participation agreement may be canceled and the consequences of the cancellation.

The bill would require the commission to submit an annual audited financial report on the operations of the trust to the Governor, the Controller, the State Auditor, and the Legislature.

The bill would provide that distributions or earnings under a Scholarshare trust participation agreement and contributions to the Scholarshare trust on behalf of a beneficiary would not be includable as gross income of a beneficiary or a participant, as specified.

The bill would make related changes in provisions governing the personal income tax law and the bank and corporation tax law.

The bill would state the intent of the Legislature that funding necessary for the startup and first-year administrative costs of the trust may be paid out of the General Fund and that administrative costs of the trust in future years may be paid out of the administrative fund of the trust.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) The general welfare and well-being of the State of California are directly related to the educational levels and skills of the citizens of the state. Therefore, a vital and valid public purpose of the state is served by the creation and implementation of programs that encourage and make possible the attainment of higher education by the greatest number of citizens of the state.

(b) The Legislature finds, declares, and recognizes that the State of California has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in California and the general welfare of the citizens and the state will be enhanced by the creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education expenses in the state and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for future higher education application represents the carrying out of a valid and vital public purpose of the State of California.

(c) In order to make available to the citizens of the state an opportunity to fund future higher education needs for beneficiaries with certain public assistance, and to ensure that California takes advantage of recent changes in tax law that will benefit this state's citizens, it is necessary that a public trust be established in which the citizens of the state and others may invest moneys for future educational use.

(d) A program, with a minimal impact on the state treasury, that encourages annual contributions in an ~~amount sufficient to pay the estimated qualified higher education expenses for four years of education at the University of California for a California resident, will~~ *amount equivalent to the maximum estimated qualified higher education expenses, as defined by subdivision (l)*

1 of Section 69980 and as established by the trust, that can  
2 be incurred by a beneficiary to obtain a baccalaureate  
3 degree at a public institution of higher education in  
4 California for four years, as a California resident, will assist  
5 those middle-class families and students finding it hardest  
6 to pay for higher education due to lack of savings, the high  
7 cost of loans, and the scarcity of grants and scholarships.  
8 An annual savings program will further encourage  
9 students to save for their own education at levels students  
10 can afford, will encourage the lifetime habit of saving for  
11 things that are important, and will foster appreciation of  
12 the value of investing in one's own education.

13 (e) A program that encourages nonprofit  
14 organizations to accumulate funds for the awarding of  
15 scholarships for recipients to be designated in the future;  
16 ~~and that accepts contributions for making need-based~~  
17 ~~scholarships~~, will benefit even the lowest income families  
18 and students in this state, who otherwise are unable to  
19 save sufficient amounts to pay for the expense of higher  
20 education.

21 (f) It is the intent of the Legislature to create the  
22 Golden State Scholarshare Trust as a self-sustaining trust,  
23 paying all costs of administration out of earnings on  
24 moneys on deposit therein. The implementation and  
25 effectuation of the Golden State Scholarshare Trust  
26 constitutes the carrying out of a valid and vital public  
27 purpose.

28 SEC. 2. Article 19 (commencing with Section 69980)  
29 is added to Chapter 2 of Part 42 of the Education Code,  
30 to read:

31  
32 Article 19. Golden State Scholarshare Trust Act

33  
34 69980. As used in this article, the following terms have  
35 the following meanings, unless the context requires  
36 otherwise:

37 (a) "Act" or "Scholarshare trust" or "Scholarshare"  
38 means the Golden State Scholarshare Trust Act.

39 (b) "Administrative fund" means the funds used to  
40 administer the Golden State Scholarshare Trust Act.

1 (c) “Beneficiary” means any person designated by a  
2 participation agreement to benefit from payments for  
3 higher education expenses at an institution of higher  
4 education.

5 (d) “Benefits” means the payment of higher  
6 education expenses on behalf of a beneficiary by the  
7 Scholarshare trust during the beneficiary’s attendance at  
8 an institution of higher education.

9 (e) “Commission” means the Student Aid  
10 Commission established pursuant to Section 69510.

11 (f) “Golden State Scholarshare Trust” or  
12 “Scholarshare trust” means the trust created pursuant to  
13 this act.

14 (g) “Institution of higher education” means a public  
15 college or university, a regionally accredited college or  
16 university, a state-approved college, university, or  
17 vocational-technical school, or any institution described  
18 in Section 1141(a) of Title 20 of the United States Code.

19 (h) “Participant” means an individual, firm, or  
20 corporation, or a legal representative of an individual,  
21 firm, or corporation who has entered into a participation  
22 agreement pursuant to this act for advance savings for  
23 higher education expenses on behalf of a beneficiary.

24 (i) “Participation agreement” means an agreement  
25 between a participant and the Scholarshare trust,  
26 pursuant to this act.

27 (j) “Program administrator” means the administrator  
28 of the Scholarshare trust appointed by the commission to  
29 administer and manage the trust.

30 (k) “Program fund” means the program fund  
31 established by this act, which shall be held as a separate  
32 fund within the Scholarshare trust.

33 (l) “Qualified higher education expenses” means the  
34 expenses of attendance at an institution of higher  
35 education as provided in Section 529(e)(3) of the  
36 Internal Revenue Code of 1986, and as determined and  
37 certified by the institution of higher education in the  
38 same manner as prescribed in Title IV of the Higher  
39 Education Act of 1965 (20 U.S.C. Sec. 1087ll, as amended).

1 (m) “Tuition and fees” means the quarterly or  
2 semester charges imposed to attend an institution of  
3 higher education and required as a condition of  
4 enrollment.

5 69981. (a) There is hereby created an  
6 instrumentality of the State of California to be known as  
7 the Golden State Scholarshare Trust.

8 (b) The purposes, powers, and duties of the trust are  
9 vested in, and shall be exercised by, the commission.

10 (c) The commission, in the capacity of trustee, shall  
11 have the power and authority to do all of the following:

12 (1) Sue and be sued.

13 (2) Make and enter into contracts necessary for the  
14 administration of the Scholarshare trust.

15 (3) Adopt a corporate seal and change and amend it  
16 from time to time.

17 (4) Invest moneys within the program fund in any  
18 investments determined by the commission to be  
19 appropriate and prudent.

20 (5) Enter into agreements with any institution of  
21 higher education, the State of California, or any federal  
22 or other state agency or other entity as required for the  
23 effectuation of its rights and duties.

24 (6) Accept any grants, gifts, legislative appropriation,  
25 and other moneys from the state, any unit of federal,  
26 state, or local government or any other person, firm,  
27 partnership, or corporation for deposit to the  
28 administrative fund or the program fund. Except as  
29 otherwise provided in Section 69982, the trust may not  
30 accept any contribution by any nonpublic entity, person,  
31 firm, partnership, or corporation that is not designated  
32 for a specified beneficiary.

33 (7) Enter into participation agreements with  
34 participants, as set forth in Section 69983.

35 (8) Make payments to institutions of higher education  
36 pursuant to participation agreements on behalf of  
37 beneficiaries.

38 (9) Make refunds to participants upon the cancellation  
39 of participation agreements pursuant to the provisions,  
40 limitations, and restrictions set forth in this act.

1 (10) Appoint a program administrator and determine  
2 the duties of the program administrator and other staff as  
3 necessary and set their compensation.

4 (11) Make provisions for the payment of costs of  
5 administration and operation of the Scholarshare trust.

6 (12) Carry out the duties and obligations of the  
7 Scholarshare trust pursuant to this act and have any and  
8 all other powers as may be reasonably necessary for the  
9 effectuation of the purposes, objectives, and provisions of  
10 this act pertaining to the Scholarshare trust, as set forth  
11 in Section 69982.

12 (d) The commission shall adopt regulations as it deems  
13 necessary to implement this article consistent with the  
14 federal Internal Revenue Code and regulations issued  
15 pursuant to that code to ensure that this program meets  
16 all criteria for federal tax-deferral or tax-exempt benefits,  
17 or both.

18 69982. In addition to effectuating and carrying out all  
19 of the powers granted by this act, the commission shall  
20 have all powers reasonably necessary to carry out and  
21 effectuate the purposes, objectives, and provisions of this  
22 act pertaining to the Scholarshare trust, including, but  
23 not limited to, the power to do all of the following:

24 (a) Engage investment advisers to assist in the  
25 investment of Scholarshare trust assets. The advisers may  
26 propose one or more investment options for participants.

27 (b) Carry out studies and projections in order to advise  
28 participants regarding present and estimated future  
29 higher education expenses and the levels of financial  
30 participation in the trust required in order to enable  
31 participants to achieve their education funding  
32 objectives.

33 (c) Contract for goods and services and engage  
34 personnel as necessary, including consultants, actuaries,  
35 managers, counsel, and auditors for the purpose of  
36 rendering professional, managerial, and technical  
37 assistance and advice.

38 (d) Participate in any other way in any federal, state,  
39 or local governmental program for the benefit of the  
40 Scholarshare trust.

1 (e) Promulgate, impose, and collect administrative  
2 fees and charges in connection with transactions of the  
3 Scholarshare trust, and provide for reasonable service  
4 charges, including penalties for cancellations.

5 (f) Procure insurance against any loss in connection  
6 with the property, assets, or activities of the Scholarshare  
7 trust.

8 (g) Administer the funds of the Scholarshare trust.

9 (h) Procure insurance indemnifying any member of  
10 the commission from personal loss or liability resulting  
11 from a member's action or inaction as a member of the  
12 commission.

13 (i) Adopt reasonable regulations for the  
14 administration of the Scholarshare trust.

15 (j) Set minimum and maximum investment levels and  
16 annual contribution limits.

17 (k) (1) Except as otherwise provided in this section,  
18 the overall maximum investment level for a designated  
19 beneficiary shall not exceed the amount ~~estimated to be~~  
20 ~~necessary to pay the qualified higher education expenses~~  
21 ~~of a beneficiary to attend the University of California for~~  
22 *equivalent to the maximum estimated qualified higher*  
23 *education expenses, as defined by subdivision (l) of*  
24 *Section 69980 and as established by the trust, that can be*  
25 *incurred by a beneficiary to obtain a baccalaureate*  
26 *degree at a public institution of higher education in*  
27 *California for four years, as a California resident,*  
28 *commencing in the year the majority of beneficiaries of*  
29 *that age are expected to be eligible to enroll in a higher*  
30 *education program. The maximum investment level shall*  
31 *be published by the trust as a monetary amount by year*  
32 *group, in order to state contribution limits clearly and to*  
33 *encourage participation on behalf of beneficiaries who*  
34 *will attend all types of higher education institutions, both*  
35 *public and independent.*

36 (2) The maximum annual contribution shall be set at  
37 an amount which, if contributed over 16 years, would  
38 reach the maximum investment level for beneficiaries of  
39 that age, *according to the actuarial projections of the trust*  
40 *or of the investment advisors engaged by the trust.*



(3) Notwithstanding paragraphs (1) and (2), participants shall be permitted to make up payments, in full or in part, for years in which they were eligible to contribute, but did not, or in which they contributed less than the maximum amount they were eligible to contribute, for the benefit of a designated beneficiary. Contributions by entities exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code operating bona fide scholarship programs for the benefit of beneficiaries to be named when the scholarships are awarded and contributions to the scholarship account of the program fund are not subject to maximum or annual contribution limits.

69983. The Scholarshare trust may enter into participation agreements with participants on behalf of beneficiaries pursuant to the following terms and agreements:

(a) Each participation agreement shall require a participant to agree to invest a specific amount of money in the trust for a specific period of time for the benefit of a specific beneficiary. The commission may specify a required minimum length of time before distributions for higher education expenses may be made and may impose a penalty on the early distribution of funds if deemed by the trust to be necessary.

(b) Participation agreements may be amended to provide for adjusted levels of payments based upon changed circumstances or changes in educational plans.

(c) Beneficiaries designated in participation agreements may be designated from date of birth.

(d) ~~The—~~*Participants shall be informed that the* execution of a participation agreement by the trust shall not guarantee in any way that higher education expenses will be equal to projections and estimates provided by the trust or that the beneficiary named in any participation agreement will do any of the following:

(1) Be admitted to an institution of higher education.

(2) If admitted, be determined a resident for tuition purposes by the institution of higher education.

1 (3) Be allowed to continue attendance at the  
2 institution of higher education following admission.

3 (4) Graduate from the institution of higher education.

4 (5) Have sufficient savings to cover fully all qualified  
5 education expenses of attending an institution of higher  
6 education.

7 (e) Beneficiaries may be changed as permitted by the  
8 regulations of the commission upon written request of the  
9 participant prior to the date of admission of any  
10 beneficiary under a participation agreement by an  
11 institution of higher education provided that the  
12 substitute beneficiary is eligible.

13 (f) Participation agreements shall be freely amended  
14 throughout their terms in order to enable participants to  
15 increase or decrease the level of participation, change the  
16 designation of beneficiaries, and carry out similar  
17 matters.

18 (g) Each participation agreement shall provide that  
19 the participation agreement may be canceled upon the  
20 terms and conditions, and upon payment of a penalty, set  
21 forth and contained in the regulations adopted by the  
22 commission.

23 (h) All contributions to Scholarshare accounts shall be  
24 in cash.

25 69984. (a) (1) The commission shall segregate  
26 moneys received by the Scholarshare trust into two funds,  
27 which shall be identified as the program fund and the  
28 administrative fund.

29 (2) (A) The trust shall separately account for any  
30 moneys received by an entity exempt from taxation  
31 under Section 501(c)(3) of the Internal Revenue Code,  
32 depositing the money for the benefit of a beneficiary to  
33 be named later pursuant to the operation of a bona fide  
34 scholarship program.

35 (B) The commission shall contract with a private  
36 investment service or with the Office of the California  
37 State Treasurer for the investment of the money in the  
38 program fund. The contract with the private investment  
39 service or the Treasurer shall contain provisions to ensure  
40 that the commission is not precluded from executing any

1 administrative duties needed to administer the  
2 Scholarshare trust successfully.

3 (b) Transfers may be made from the program fund to  
4 the administrative fund for the purpose of paying  
5 operating costs associated with administering the trust  
6 and as required by this act. On an annual basis,  
7 expenditures from the administrative fund shall not  
8 exceed more than 1 percent of the total program fund. All  
9 costs of administration of the trust shall be paid out of the  
10 administration fund.

11 (c) All moneys paid by participants in connection with  
12 participation agreements shall be deposited as received  
13 into the program fund and shall be promptly invested and  
14 accounted for separately. Deposits and interest thereon  
15 accumulated on behalf of participants in the program  
16 fund of the Scholarshare trust may be used for payments  
17 to any institution of higher education.

18 69985. (a) Any participant may cancel a  
19 participation agreement at will. Participants shall be  
20 entitled to a refund upon cancellation thereof of an  
21 amount equal to the then current market value of the  
22 amount of all contributions made to their account, less a  
23 penalty with respect to the interest earned thereon to be  
24 levied by the Scholarshare trust that shall be more than  
25 de minimis.

26 (b) Upon the occurrence of any of the following  
27 circumstances, no penalty shall be levied by the  
28 Scholarshare trust in the event of cancellation of a  
29 participation agreement:

30 (1) Death or disability of the beneficiary.

31 (2) The beneficiary's receipt of a scholarship or  
32 allowance or payment described in Section 135(d)(1)(B)  
33 or (C) of the Internal Revenue Code received by the  
34 designated beneficiary, to the extent that the amount  
35 refunded does not exceed the amount of the scholarship,  
36 allowance, or payment.

37 (c) In the event of cancellation of a participation  
38 agreement for any of the causes listed in subdivision (b),  
39 the participant shall be entitled to a refund equal to the  
40 then current market value of the amount of all

1 contributions made by the participant under the  
2 participation agreement.

3 69986. For all purposes of California law, the following  
4 apply:

5 (a) The participant shall retain ownership of all  
6 payments made under any participation agreement up to  
7 the date of utilization for payment of higher education  
8 costs for the beneficiary, and all interest derived from the  
9 investment of the payments made by the participant shall  
10 be deemed to be held in trust for the benefit of the  
11 beneficiary. No interest earned on any account in the  
12 trust may be pledged as collateral for any loan.

13 (b) In the event the participation agreement is  
14 canceled prior to payment of higher education expenses  
15 for the beneficiary, the participant shall retain ownership  
16 of all contributions made under the participation  
17 agreement and reversionary right to receive interest on  
18 all the contributions at the rate of interest at which the  
19 contributions were invested.

20 (c) Notwithstanding subdivision (b), if there has been  
21 a decrease in the value of the funds in a participant's  
22 account at the time of cancellation of the participation  
23 agreement, the participant shall not have ownership  
24 rights to any amount above the market value of the funds  
25 in the account at the time of cancellation.

26 (d) Program administrators shall develop adequate  
27 measures to prevent contributions on behalf of a  
28 designated beneficiary in excess of those necessary to  
29 provide for the qualified higher education expenses of the  
30 beneficiary or in excess of the maximum or annual  
31 contribution limits provided for herein.

32 (e) If the beneficiary graduates from an institution of  
33 higher education, and a balance remains in the  
34 participant's account, then the program administrator  
35 shall pay the balance to the participant. The  
36 administrator shall impose a penalty that is more than de  
37 minimis.

38 (f) Program administrators shall develop a method to  
39 make payment of qualified higher education expenses  
40 directly to higher education institutions for the benefit of



1 designated beneficiaries and to control for fraud under  
2 any direct reimbursement method of payment that it  
3 may adopt. The institution of higher education shall  
4 obtain ownership of the payments made for the higher  
5 education expenses paid to the institution at the time  
6 each payment is made to the institution.

7 (g) Any amounts paid pursuant to the Golden State  
8 Scholarshare Trust that are not listed in this section shall  
9 be owned by the trust.

10 (h) A participant may transfer ownership rights to  
11 another eligible participant, including, but not limited to,  
12 a gift of the ownership rights to an eligible minor  
13 beneficiary pursuant to this act. The transfer shall be  
14 effected and the property distributed in accordance with  
15 administrative regulations adopted by the commission or  
16 the terms of the participation agreement.

17 69989. (a) The commission shall submit an annual  
18 audited financial report, prepared in accordance with  
19 generally accepted accounting principles, on the  
20 operations of the Scholarshare trust by August 1 to the  
21 Governor, the Controller, the State Auditor, and the  
22 Legislature. The annual audit shall be made by an  
23 independent certified public accountant and shall  
24 include, but not be limited to, direct and indirect costs  
25 attributable to the use of outside consultants,  
26 independent contractors, and any other persons who are  
27 not state employees. Any contributions to the  
28 Scholarshare trust fund that are not directed to a specified  
29 beneficiary shall be accounted for and treated separately  
30 in the annual audit.

31 (b) The annual audit shall be supplemented by the  
32 following information prepared by the commission:

33 (1) Any studies or evaluations prepared in the  
34 preceding year.

35 (2) A summary of the benefits provided by the trusts  
36 including the number of participants and beneficiaries in  
37 the trust.

38 (3) Any other information that is relevant in order to  
39 make a full, fair, and effective disclosure of the operations  
40 of the Scholarshare trust.

1 69990. (a) The trust shall provide an annual listing to  
2 the Franchise Tax Board on magnetic tape or other  
3 machine-readable form, and in a manner agreed upon by  
4 the Franchise Tax Board and the Scholarshare trust, of all  
5 distributions, including payment of benefits and refunds,  
6 to any individual with respect to an interest in a  
7 participation agreement. The listing shall include the  
8 names, addresses, tax identification numbers, and type  
9 and amounts of each distribution, including interest  
10 earned and administration refund levied. The taxpayer's  
11 identification numbers obtained through the  
12 participation agreement process shall be used exclusively  
13 for state tax administration purposes.

14 (b) The trust shall make a report to each participant  
15 or beneficiary of the type and amount of each  
16 distribution, including payment of benefits and refunds.

17 (c) The trust also shall report ~~no less often than~~  
18 ~~annually~~ *annually by March 1* to each participant or  
19 ~~beneficiary~~ *the beneficiary all of the following:*

20 (1) ~~The value of the beneficiary's account, the interest~~  
21 ~~earned thereon and the account.~~

22 (2) *The interest earned thereon.*

23 (3) *The rate of return of the investments in the*  
24 *beneficiary's account for that reporting period,* ~~the~~  
25 *period.*

26 (4) *The investment goal the participant will achieve if*  
27 *all future contributions with respect to that beneficiary*  
28 *are timely made and the made.*

29 (5) *The amount of any missed contributions that the*  
30 *participant is eligible to make up.*

31 (6) *Information regarding the trends in qualified*  
32 *higher education expenses at the state's public segments*  
33 *of higher education, which shall include, but need not be*  
34 *limited to, the following:*

35 (A) *The actual increase or decrease in qualified higher*  
36 *education expenses in the prior year.*

37 (B) *To the extent possible, any proposals by the*  
38 *segments to increase or decrease fees or tuition in the*  
39 *next fiscal year.*

1 (C) To the extent possible, any proposals by the  
2 Legislature or the Governor to increase or decrease fees  
3 or tuition in the next fiscal year.

4 (D) The names of the State Senator and Assembly  
5 Member who represent the district in which the  
6 participant or beneficiary resides and a business address  
7 and telephone number where they may be reached.

8 (d) The trust, as an advocate for affordable higher  
9 education opportunities for participants and  
10 beneficiaries of the program, shall also provide a means  
11 for participants or beneficiaries to express concerns or  
12 comments regarding the Scholarshare program and any  
13 information required to be reported by this section.

14 69991. The assets of the trust, including the program  
15 fund, shall at all times be preserved, invested, and  
16 expended solely and only for the purposes of the trust and  
17 shall be held in trust for the participants and beneficiaries  
18 and no property rights therein shall exist in favor of the  
19 state. The assets shall not be transferred or used by the  
20 State of California for any purposes other than the  
21 purposes of the trust.

22 69992. The trust shall aggressively market this  
23 program to the citizens of the State of California. *The*  
24 *trust shall include in its marketing efforts information*  
25 *designed to educate citizens about the benefits of saving*  
26 *for higher education and information to help them decide*  
27 *the level of Scholarshare participation and the*  
28 *combination of savings strategies that may be appropriate*  
29 *for them.* The trust shall also develop a mechanism to  
30 keep participants in this program motivated about their  
31 current and future academic endeavors.

32 69993. It is the intent of the Legislature that startup  
33 and first-year administrative costs may be paid out of the  
34 General Fund. Necessary administrative costs in future  
35 years shall be paid out of the administrative fund.

36 69994. This act shall be construed liberally in order to  
37 effectuate its legislative intent. The purposes of this act  
38 and all of its provisions with respect to powers granted  
39 shall be broadly interpreted to effectuate that intent and  
40 purposes and not as to any limitation of powers.

1 SEC. 3. Section 17134 is added to the Revenue and  
2 Taxation Code, to read:

3 17134. (a) For purposes of this section, the following  
4 terms have the following meanings as provided in the  
5 Golden State Scholarshare Trust Act (Art. 19  
6 (commencing with Section 69980), Ch. 2, Pt. 42, Ed. C.):

7 (1) “Beneficiary” has the meaning set forth in  
8 subdivision (c) of Section 69980 of the Education Code.

9 (2) “Benefit” has the meaning set forth in subdivision  
10 (d) of Section 69980 of the Education Code.

11 (3) “Participant” has the meaning set forth in  
12 subdivision (h) of Section 69980 of the Education Code.

13 (4) “Participation agreement” has the meaning set  
14 forth in subdivision (i) of Section 69980 of the Education  
15 Code.

16 (5) “Scholarshare trust” has the meaning set forth in  
17 subdivision (f) of Section 69980 of the Education Code.

18 (b) Except as otherwise provided in subdivision (c),  
19 gross income of a beneficiary or a participant does not  
20 include any of the following:

21 (1) Any distribution or earnings under a Scholarshare  
22 trust participation agreement, as provided in Article 19  
23 (commencing with Section 69980) of Chapter 2 of Part 42  
24 of the Education Code.

25 (2) Contributions to the Scholarshare trust on behalf  
26 of a beneficiary shall not be includable as gross income of  
27 that beneficiary.

28 (c) (1) Any distribution under a Scholarshare trust  
29 participation agreement shall be includable in the gross  
30 income of the distributee in the manner as provided  
31 under Section 72 of the Internal Revenue Code, as  
32 modified by Section 17085, to the extent not excluded  
33 from gross income under any other provision of this part.  
34 For purposes of applying Section 72 of the Internal  
35 Revenue Code, the following apply:

36 (A) All Scholarshare trust accounts of which an  
37 individual is a beneficiary shall be treated as one account,  
38 except as otherwise provided.

39 (B) All distributions during a taxable year shall be  
40 treated as one distribution.



(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

(d) For purposes of determining adjusted gross income, Section 62(a)(9) of the Internal Revenue Code shall not apply to any amount forfeited upon distribution of an account created pursuant to a participation agreement.

~~SEC. 4. Section 23735 of the Revenue and Taxation Code is amended to read:~~

~~23735. (a) Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.~~

~~(b) Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall apply to income years beginning on or after January 1, 1990, for property acquired by the partnership after October 13, 1987, and partnership interests acquired after October 13, 1987.~~

~~(c) An interest in a participation agreement, as defined in subdivision (i) of Section 69980 of the Education Code, shall not be treated as debt.~~

*SEC. 4. Section 23735 of the Revenue and Taxation Code is amended to read:*

23735. (a) Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.

(b) Section 10214 of Public Law 100-203, relating to the treatment of certain partnership allocations, shall apply to income years beginning on or after January 1, 1990, for property acquired by the partnership after October 13, 1987, and partnership interests acquired after October 13, 1987.

*(c) An interest in a participation agreement, as defined in subdivision (i) of Section 69980 of the Education Code, shall not be treated as debt.*

*SEC. 5. Section 24306 is added to the Revenue and Taxation Code, to read:*

24306. (a) For purposes of this section, the following terms have the following meanings, as provided in the Golden State Scholarshare Trust Act (Art. 19 (commencing with Section 69980), Ch. 2, Pt. 42, Ed. C.):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a participant shall not include any of the following:

(1) Any earnings under a Scholarshare trust, or a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Contributions to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 24272.2, to the extent not excluded from gross income under any other provision of this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during an income year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the income year begins.

(2) A contribution by a for-profit or nonprofit entity for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

1 (4) (A) Paragraph (1) shall not apply to that portion  
2 of any distribution that, within 60 days of distribution, is  
3 transferred to the credit of another beneficiary under the  
4 Scholarshare trust who is a “member of the family,” as  
5 that term is used in Section 2032A(e)(2) of the Internal  
6 Revenue Code, of the former beneficiary of that  
7 Scholarshare trust.

8 (B) Any change in the beneficiary of an interest in the  
9 Scholarshare trust shall not be treated as a distribution for  
10 purposes of paragraph (1) if the new beneficiary is a  
11 “member of the family,” as that term is used in Section  
12 2032A(e)(2) of the Internal Revenue Code, of the former  
13 beneficiary of that Scholarshare trust.

14 SEC. 6. Section 24328 is added to the Revenue and  
15 Taxation Code, to read:

16 24328. The Golden State Scholarshare Trust,  
17 established pursuant to Article 19 (commencing with  
18 Section 69980) of Chapter 2 of Part 42 of the Education  
19 Code, is an instrumentality of this state and the income  
20 of the Scholarshare trust shall be exempt from taxes  
21 imposed under this part. The Scholarshare trust is  
22 established and shall be maintained as a qualified state  
23 tuition program as defined in Section 529 of the Internal  
24 Revenue Code, as added by Section 1806 of the Small  
25 Business Job Protection Act of 1996 (P.L. 103-188).

26 SEC. 7. It is the intent of the Legislature that the  
27 Golden State Scholarshare Trust be maintained as a  
28 qualified state tuition program as provided in Section 529  
29 of the Internal Revenue Code. In applying that section,  
30 the Franchise Tax Board shall interpret and apply Article  
31 19 (commencing with Section 69980) of Chapter 2 of Part  
32 42 of the Education Code and Sections 17134, 23735, and  
33 24306 of the Revenue and Taxation Code in a manner  
34 consistent with Section 529 of the Internal Revenue Code  
35 and any regulations issued under that section. Any  
36 ambiguities shall be resolved consistent with Section 529  
37 of the Internal Revenue Code and any future  
38 amendments.

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